Supreme Court, U.S.
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No. 03-1224

In the Supreme Court of the United States

ILLINOIS, PETITIONER,

v.

RAYMOND E. HARRIS, RESPONDENT.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

LISA MADIGAN
Attorney General of Illinois
GARY FEINERMAN*
Solicitor General
LINDA D. WOLOSHIN
Assistant Attorney General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-3698

*Counsel of Record

Counsel for Petitioner

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REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Certiorari should be granted because the decision below deepens an acknowledged and intractable split over whether the Fourth Amendment requires reasonable suspicion to conduct a warrant check on a passenger during a lawful traffic stop; because the Illinois Supreme Court erred in answering that question in the affirmative; and because the question presented is important and recurring. Respondent offers no sound basis to deny the petition.

A. There is now a four-way split over the limits (if any) placed by the Fourth Amendment on conducting warrant checks of passengers during a valid traffic stop. Pet. 8-12. At one end of the spectrum, some courts have categorically held that the Fourth Amendment requires reasonable suspicion before a police officer may conduct a warrant check on a passenger. See *People v. Jackson*, 39 P.3d 1174, 1186-1190 (Colo. 2002) (en banc); *Sikes v. State*, 323 S.C. 28, 31-32, 448 S.E.2d 560, 562-563 (1994). At the opposite end of the spectrum, other courts have held the Fourth Amendment does not require reasonable suspicion to justify such warrant checks. See *State v. Landry*, 588 So.2d 345, 346-348 (La. 1991); *State v. Ybarra*, 156 Ariz. 275, 276, 751 P.2d 591, 592 (App. 1987). Some courts have taken an intermediate position, holding that the Fourth Amendment does not require reasonable suspicion where the purpose of the warrant check is to determine whether the passenger is legally able to drive the car. See *State v. Mennegar*, 114 Wash. 2d 304, 313, 787 P.2d 1347, 1351-1352 (1990); *State v. Higgins*, 884 P.2d 1242, 1245 n.2 (Utah 1994). And still other courts, aligned as a practical matter with those holding that reasonable suspicion is never required, have ruled that once a police officer learns that there is a warrant for the passenger's arrest, the officer has a right to arrest and conduct

a search incident to the arrest — regardless of whether the warrant check itself was constitutionally valid. See *State v. Jones*, 270 Kan. 526, 527, 17 P.3d 359, 360 (2001); *United States v. Green*, 111 F.3d 515, 521 (7th Cir. 1997).

Respondent does not dispute that the question presented has prompted what the Illinois Supreme Court aptly described as a "tempestuous discourse" in the lower courts. Pet. App. 14a. Nor does respondent deny that the conflict is intractable and can be settled only by this Court. Instead, respondent argues that the petition asserted that "the Illinois Supreme Court's decision in this case is only fundamentally incompatible with two cases," *Landry* and *Jones*, and that the split with those two cases is illusory. Opp. 4.

Respondent is wrong, both in his characterization of the petition and on whether there is a real split. The split between the Illinois Supreme Court's decision and *Jones* is not illusory. Presenting facts materially identical to those presented here, *Jones* held that an officer who learns of an outstanding warrant has the right to arrest the passenger, and conduct a search incident to arrest, regardless of whether the warrant check itself violated the Fourth Amendment. Accord, *Green*, 111 F.3d at 521. If that rule of law had been applied by the Illinois Supreme Court in this case, the opposite result would have been reached. That is a textbook example of a certworthy split. See R. STERN, ET AL., SUPREME COURT PRACTICE 226 (8th ed. 2002) ("A genuine conflict, as opposed to a mere conflict in principle, arises when it may be said with confidence that two courts have decided the same legal issue in opposite ways, based on their holdings in different cases with very similar facts.").

The Illinois Supreme Court's decision also departs *either* from the line of authority requiring reasonable suspicion to perform a warrant check in all instances (*Sikes* and *Jackson*) *or* from the authorities holding that no reasonable suspicion is

required where the police merely seek to determine whether the passenger is legally able to drive the car (*Higgins* and *Mennegar*). As the petition noted, it is unclear whether the Illinois Supreme Court aligned itself with the categorical approach in *Sikes* and *Jackson* or the intermediate approach in *Higgins* and *Mennegar*. Pet. 12 n.2. For purposes of deciding whether to grant certiorari, however, the important point is that the Illinois Supreme Court, regardless of where it fits on the spectrum, definitely split with one of those two lines of authority.

Finally, the decision below diverges from precedents holding that an officer does not need reasonable suspicion to perform a warrant check of a passenger at a traffic stop (*Landry* and *Ybarra*). Respondent answers by arguing that *Landry* did not impose a categorical rule in this regard, but rather recognized that reasonable suspicion might be required for daylight traffic stops. Opp. 4-5. Respondent's quibble is immaterial. The traffic stop in *Landry* occurred at night, so the Louisiana court's one-sentence suggestion that the same result *might* not have obtained had the stop occurred in "broad daylight" is dicta. 588 So.2d at 348. The point is moot in any event, for the Illinois Supreme Court's decision plainly departs from *Ybarra*, which indisputably and categorically holds that reasonable suspicion is not required to perform a warrant check on a passenger.

In sum, the question presented has been answered at least four different ways by the lower courts, and is ripe for resolution by this Court.

B. In addressing the merits of the Illinois Supreme Court's decision, respondent contends that the judgment below might have been influenced by the Illinois court's supposed view that "the check could well have lengthened the duration of the detention if the officer had to wait for the results of the check."

Opp. 5. Respondent is wrong. On the question of duration, the Illinois Supreme Court stated: "From the record, we cannot ascertain whether the warrant check prolonged the detention." Pet. App. 13a. After explaining why the record was unclear in this respect, the court stated: "Under the circumstances at bar, however, regardless of the duration of the detention, the warrant check was impermissible because it changed the fundamental nature of the stop." *Ibid.*

Thus, the Illinois Supreme Court's ruling did not hinge on the traffic stop's duration, but solely on the fact that a warrant check occurred. Consequently, this matter comes to the Court as a pure "fundamental nature of the stop" case and not a "duration of the stop" case, and accordingly is an appropriate vehicle to answer the question presented.

C. Respondent suggests that this Court will not reach the question presented if it first finds that a reasonable person in respondent's position would not have felt free to refuse the officer's request for his identification. Opp. 2-3. Respondent is incorrect. Because the Illinois Supreme Court unequivocally held that the officer's request for respondent's identification did not violate the Fourth Amendment (Pet. App. 9a-10a), this matter comes to the Court presenting only the question of whether reasonable suspicion was required to justify the warrant check.

In any event, it is beyond dispute that the issue posed by respondent — whether a reasonable person in respondent's position would have felt free to decline the officer's request for identification — is not difficult and can be answered only in the affirmative. The two cases cited by respondent, *Florida v. Bostick*, 501 U.S. 429 (1991), and *United States v. Drayton*, 536 U.S. 194 (2002), set forth the governing standard, which is "'whether a reasonable person would feel free to decline the officers' request or otherwise terminate the encounter.'" *Drayton*, 536 U.S. at 202 (quoting *Bostick*, 501 U.S. at 436).

Here, as in *Drayton*, there is no indication that the officer "brandish[ed] a weapon," "ma[de] any intimidating movements," or "spoke" to respondent in anything other than "a polite, quiet voice," or that there was any "application of force, . . . overwhelming show of force, . . . threat, . . . command, [or] even an authoritative tone of voice." *Drayton*, 536 U.S. at 204. Because the officer's conduct here was no more intimidating than the conduct in *Drayton* — which held that a reasonable person in Drayton's shoes would have felt free to decline the officer's request to search his bag — a reasonable person in respondent's position would have felt free to decline the officer's request for identification. This result is not altered by the fact, highlighted by respondent (Opp. 3), that the driver was caught lying in the moments before the officer requested respondent's identification. See *Drayton*, 536 U.S. at 205-206 (rejecting argument that "no reasonable person would feel free to terminate the encounter with the officers after [Drayton's companion] had been arrested").*

For these reasons, this Court's ability to decide the question presented will not be impeded by respondent's (incorrect) suggestion that a reasonable person would not have felt free to decline the officer's request for identification.

D. The petition established that the question presented is important and recurring. Pet. 15. Respondent answers this

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* As respondent observes (Opp. 2-3), the Illinois Appellate Court held that no reasonable person in the respondent's position would have felt free to decline the officer's request for identification. See Pet. App. 32a-33a. The Illinois Appellate Court's holding is irrelevant, as the Illinois Supreme Court — the court whose decision is under review — ruled that the request for identification did not violate the Fourth Amendment. Moreover, the Illinois Appellate Court's holding is outdated, as the court rendered its decision in October 2001, without the benefit of *Drayton*.

point by contending that the petition "begs the question of whether it is both desirable and constitutional for the police to" conduct warrant checks of passengers at traffic stops. Opp. 6. Significantly, respondent does not deny that the underlying constitutional question — the merits of which Illinois addressed elsewhere in the petition (Pet. 7-8, 13-14) — recurs with great frequency and has deeply divided the lower courts. It is precisely the kind of question that warrants this Court's attention. See STERN, ET AL., *supra*, at 228 ("The important and recurring nature of the issue in conflict often plays a decisive role in the grant or denial of certiorari.").

E. When the petition in this case was filed, the Court was still considering whether to grant certiorari in *Illinois v. Caballes*, No. 03-923. The petition noted that the question presented here, whether the police must have reasonable suspicion to conduct a warrant check of a passenger during a lawful traffic stop, was closely related to the question presented in *Caballes*, whether reasonable suspicion is required to use a drug-detection dog to sniff a vehicle during a lawful traffic stop. Pet. 7. Given the similarity between the questions presented in the two cases, the petition asked, at a minimum, that this case be held pending the Court's consideration of the petition for certiorari in *Caballes*. Pet. 15.

The petition for certiorari in *Caballes* has since been granted. 124 S. Ct. 1875 (2004). For the reasons set forth above, the petition in this case is independently certworthy and should be granted as well. At a minimum, the petition should be held pending the Court's disposition of *Caballes*.

CONCLUSION

The petition for a writ of certiorari should be granted. At a minimum, this matter should be held pending the Court's disposition of *Illinois v. Caballes*, No. 03-923, cert. granted, 124 S. Ct. 1875 (2004).

Respectfully submitted.

LISA MADIGAN
Attorney General of Illinois
GARY FEINERMAN*
Solicitor General
LINDA D. WOLOSHIN
Assistant Attorney General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-3698

*Counsel of Record

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